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Private Lawyers in Contemporary Society: Australia

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I. MECHANISMS FOR GROWTH

A. Admission of Practitioners

Admission to practice law in Australia falls under the general supervisory power of supreme court judges in the various jurisdictions. The degree of supervision varies among jurisdictions, but the judiciary generally is responsible for setting the educational requirements for admission. A variety of admission boards perform a number of administrative and supervisory functions; for example, determining whether a particular law school's degree satisfies educational requirements for admission.¹

The principal division between lawyers in Australia is between "barristers" and "solicitors." In New South Wales and Queensland a formal division exists between these two branches of the practicing profession and persons are admitted as either barristers or solicitors. In all other states and territories, persons are admitted as "barristers and solicitors." However, in Victoria, practitioners segregate themselves into "de facto" separate practicing streams and the profession is "fused in law, but divided in practice."² Similarly, in other states and territories separate bars have developed and their members voluntarily act only in the capacity of barristers.

In general, admission to practice law is contingent upon the applicant having completed a recognized law degree, and a period of pupillage or articles of clerkship, a practical training program, or a post-graduate certificate of laws course. A small number of applicants are admitted to practice on the successful completion of examinations set by

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¹ See generally D. WEISBROT, AUSTRALIAN LAWYERS 144-45 (1990).

² *Id.* at 59.

admission boards. These non-degree legal qualifications are criticized as "very poor substitutes for properly constructed university courses."³

Upon completion of these educational requirements, academic and practical, an applicant is entitled to admission subject to being of "good character." Consequently there is no "quota" or other point-of-entry control into the legal profession. In other words, the number of persons entering the legal profession is a direct product of the number of graduates produced by ten recognized law schools in Australia. A New South Wales inquiry into legal education recommended a reduction of student places in legal education,⁴ but this recommendation has never been implemented.

In 1960, only six law schools operated in Australia, but within fifteen years the number had doubled. The last three years have seen a further major expansion in law schools with an additional ten schools commencing operations or reaching the final planning stage. Therefore, by the mid-1990s the number of law schools will have doubled again.⁵ This dramatic expansion in the number of law schools, and law graduates is reflected in the number of Australian lawyers:⁶

Year	Number of lawyers
1911	2,955
1933	4,345
1947	4,329
1961	6,636
1975	12,580
1986	26,007

B. Causes of Growth

Numerous factors contribute to law school growth, including demand for places in legal education, and rapid expansion of the legal profession. Many of these factors are interlinked. From the university perspective, Crawford comments as follows:

(T)here was one thing the universities were good at. They could increase the number of students. Bolstered by the vast demand for places in law schools and by the supposed kudos of professional faculties the

³ See *Comments of D. Drummond QC, President of the Queensland Bar Association*, THE COURIER MAIL, July 16, 1991.

⁴ LEGAL EDUCATION IN NEW SOUTH WALES: REPORT OF COMMITTEE OF ENQUIRY 61 (19-79) [the "Bowen Report"].

⁵ See AUSTRALIAN LAW NEWS, April 1991, at 9.

⁶ WEISBROT, *supra* note 1, at 63; Australian Bureau of Statistics Census figures.

universities saw in increased law numbers a solution to declining standards (in public universities) and enrollments in mainstream areas such as science, arts, and engineering.⁷

From a student perspective, high demand as well as a widening field of employment continues for law graduates.⁸ Moreover, law graduates have experienced the highest level of salary growth in Australia. In 1990, they earned 368.4% of the starting salaries of their 1977 counterparts.⁹ Salaries of graduates five years after graduation reveal that law is ranked third behind medicine and dentistry.¹⁰ In addition, 96% of law graduates during the 1983-1987 period were fully employed within months after graduation.¹¹ Regarding the widening field of employment, Weisbrot comments:

One reason for the continued high rate of employment of law graduates is the increasing willingness and ability of lawyers to work outside of the traditional modes of private practice. The Commonwealth Department of Employment and Industrial Relations estimates that ten to fifteen percent of lawyers are employed by governments, while "surplus" law graduates appear to be absorbed relatively easily into generalist administrative positions. A Commonwealth Tertiary Education Commission survey of law graduates found that twenty-five percent were in employment which was either not essentially legal, or was essentially legal but not private practice or government lawyering. This included work in teaching, legal publishing, and corporations. Another Commonwealth Tertiary Education Commission study found that some law graduates were also well placed to move into new areas of work: high technology and growth in service industries will increase demand for tertiary graduates . . . in the traditional professions (e.g. law and accountancy) with a competency in, and understanding of, new techniques.¹²

⁷ J. CRAWFORD, THE FUTURE OF PUBLIC LAW SCHOOLS, LAW COUNCIL OF AUSTRALIA LEGAL EDUCATION CONFERENCE, BOND UNIVERSITY, QUEENSLAND 3 (1991) (The conference was held on February 13-16).

⁸ See D. PEARCE ET AL., AUSTRALIAN LAW SCHOOLS: A DISCIPLINE ASSESSMENT FOR THE COMMONWEALTH TERTIARY EDUCATION COMMISSION 524 (1987).

⁹ GRADUATE CAREERS COUNCIL OF AUSTRALIA, GRADUATE STARTING SALARIES 1990, at 11-12 (1991).

¹⁰ *Id.* at 13-14. See also NATIONAL INSTITUTE OF LABOUR STUDIES, LAWYERS' INCOMES IN AUSTRALIA (1991).

¹¹ GRADUATE CAREERS COUNCIL OF AUSTRALIA, 1986 AUSTRALIAN GRADUATES IN 1987, at 10 (1987).

¹² WEISBROT, *supra* note 1, at 71. See also DEPARTMENT OF EMPLOYMENT AND INDUSTRIAL RELATIONS, EMPLOYMENT PROSPECTS BY INDUSTRY AND OCCUPATION 89 (1983); PEARCE, *supra* note 8, at 24.

It is interesting to note the destinations as of April 30, 1990 of 1989 first degree law graduates. The main occupations are as follows:

	Males	Females	Average
	%	%	%
Management, Administration	3.0	1.7	2.4
Lawyer	61.0	60.0	60.0
Accountant	3.8	2.3	3.2
Clerk	8.9	14.0	11.0
Business professional	1.3	3.2	2.1
All other	22.0	18.8	21.3 ¹³

Law is increasingly regarded as an excellent generalist qualification, providing a good grounding for a variety of career options.

Numerous other factors account for the rapid expansion of the legal profession and the demand for law graduates. Deregulation of the Australian financial market and the growth of Australian business operations in the international sphere have created new challenges for commercial lawyers. Complex mergers and takeovers, international taxation arrangements, investment and securities requirements, and major property developments require new and sophisticated legal services. New technology has created new challenges and opportunities for lawyers. Modes of communication and access to information are changing rapidly. Moreover, the application of the laws of copyright, trade designs, trade secrets, trademarks, and business reputations of innovations in the areas of computer hardware and software, information systems, communications, and medical technology require lawyers to be aware of new technology and its potential application.¹⁴ Australian legal firms increasingly perceive the need for expansion into Southeast Asia and the Pacific. New work is generated and the need for lawyers with the ability to work at an increasingly sophisticated level in countries like Japan, Taiwan, the Peoples' Republic of China, Korea, Indonesia, Malaysia, and the Philippines is critical. Case loads have grown exponentially, partly because of the growth of population, the increasing complexity of the law, the creation of new rights (for example, in consumer law, family law, trade practices), and the drug problem (and related crime). Funding by the Commonwealth government of legal services on a national basis through

¹³ GRADUATE CAREERS COUNCIL OF AUSTRALIA, 1989 AUSTRALIAN GRADUATE IN 1990, at 19 (1991).

¹⁴ *Legal Eagles Are 'Naturals' for Information Technology*, THE AUSTRALIAN, July 24, 1990.

the establishment of offices such as the Australian Legal Aid Office and the Aboriginal Legal Service has had a major impact.¹⁵

II. DESCRIPTIONS OF GROWTH

Weisbrot comments:

The Australian Legal profession does not reflect the socio-economic class, ethnicity or gender composition of the society at large. The recent huge expansion in numbers . . . has resulted in a very young profession. The other key demographic shift has been in the significant increase in the number and proportion of women lawyers. However, the social background of young lawyers is, if anything, more exclusive than in previous generations.¹⁶

The vast majority of Australian law students enter university education directly from high school and entrance is determined, with minor exceptions, on the basis of school results only. Entrance requirements are very high¹⁷ and successful entrants typically come from affluent backgrounds, have attended expensive private secondary schools, and have family connections in the legal profession. A comprehensive analysis of student selection and performance at the University of Adelaide law school revealed, for example, that seventy-eight percent of the student body came from only twelve private schools.¹⁸

The number of women law graduates has increased dramatically in recent years. In 1973 fifteen percent of graduates entering the profession were female. By 1990 this percentage had increased to forty-eight percent. The growth in the number of women lawyers in Australia is re-

¹⁵ WEISBROT, *supra* note 1, at 3.

¹⁶ *Id.* at 79.

¹⁷ The following table gives an indication of the excess demand for places, and the consequent effect upon minimum entry scores required:

Applicant and Quotas for First Year Law. 1989

Law School	Applicants	Quota
Sydney University	n/a	208
University of NSW	2,690	170
Melbourne University	2,029	252
Monash University	2,000	290
University of Queensland	1,172	275
University of Adelaide	961	160

Source: The Law Schools

Note: Applicants include persons applying for more than one degree.

¹⁸ J.R. Bradsen & J.A. Farrington, *Student Selection and Performance in the Faculty of Law, the University of Adelaide* 29 AUSTL. U. REV. 25 (1986).

flected in the following table¹⁹:

Year	Number of Women Lawyers	% of All Lawyers
1911	6	0.2
1933	49	1.1
1947	109	2.6
1971	618	6.0
1986	4,473	17.2

The Law Society of Western Australia, in conjunction with the Equal Opportunity Committee, recently arranged for a survey to be conducted on the career aspirations and patterns of female lawyers.²⁰ The survey compared the situation of 166 women who had graduated in Western Australia since 1970 with a random sample of 141 men who had graduated since that date. The main findings of the survey can be summarized as follows:

Career patterns for both sexes were fairly similar with the majority of male and female lawyers:

- having the same qualifications and having taken the same length of time to obtain them;
- currently working in the areas of commercial law, conveyancing, or litigation/prosecutions;
- having been employed in their current position on average for two or three years;
- on average having two or three employers since graduating from a university;
- having been employed as a solicitor or associate for a similar length of time.

Further analysis of career patterns indicated that female respondents were more likely to:

- be completing articles or working in litigation, family law, legislative drafting, or company administration and less likely to be a partner, sole practitioner, or barrister, or to work in the areas of criminal law or workers compensation;
- have been in a partnership or sole practice for shorter periods than male respondents;
- have taken a break from full-time employment due to "family com-

¹⁹ Australian Bureau of Statistics national census figures. See WEISBROT, *supra* note 1, at 85.

²⁰ See BRIEF, April 1991, at 6.

mitments" whereas males took a break for "overseas travel."

The future aspirations of male and female respondents differed significantly:

- The majority of female respondents perceived the attainment of partnership as a long-term goal. In so doing, they placed greater short-term emphasis on rearing a family;
- Female respondents also expressed a greater expectation than males that they would specialize in a "new area of law" in the future. The reasons given for this anticipated specialization were to achieve job satisfaction and variety, and because the increasing complexity and changing of laws make it necessary.

A report commissioned by the Law Council of Australia in 1990 concludes by stating that female lawyers earn less than male lawyers as a group because they are younger and less experienced, on average.²¹ Consequently, fewer have been promoted to senior counsel or partner. Female lawyers also work fewer hours per week, due to child-bearing and child-rearing factors which influence the experience and hours patterns of female lawyers. No evidence of direct discrimination against female lawyers was found.

Minority groups are under-represented in the legal profession. Special admission programs at some law schools have produced a small number of Aboriginal lawyers. The per capita representation of migrant groups should continue to rise as participation rates in university education increases with duration of residence.²²

III. TRENDS AND ISSUES

A. *Lawyers Fees and Access to Justice*

The Australian Senate Standing Committee on Legal and Constitutional Affairs has been considering the "cost of justice" for two years. Concerns over the cost of justice have generated some heated criticism recently.

For example, Mr. Justice de Jersey of the Queensland Supreme Court talks of lawyers becoming too absorbed with the "Rolls-Royce" model when they could often obtain quick, inexpensive results for clients. High fees deny middle-income earners access to the courts. The

²¹ R. BLANDY AND F. ROBERTSON, NATIONAL INSTITUTE OF LABOUR STUDIES, *LAWYERS IN COMES IN AUSTRALIA* 38 (1991).

²² D.S. Anderson and J.S. Western, *Social Profiles of Students in Four Professions*, 3 Q. REV. AUSTL. EDUC. 20 (1970); WEISBROT, *supra* note 1, at 92.

Chief Justice of the Family Court, Justice Nicholson, accuses some lawyers of "rapacious" overcharging. He asserts that the profession needs to look at some of the more blatant "rip-offs" such as billing clients for waiting time before a case is heard, unnecessary cross-examination, the calling of unnecessary witnesses and charging on a five-minute basis "rather like a taxi-driver." He says the Australian community has suffered greatly from the notion that legal firms must be conducted in the same way as businesses and driven by accountancy practices "more appropriate to selling soap than legal services."²³

In addition to the Senate Standing Committee, the Trade Practices Commission, and the Law Reform Commission of Victoria have embarked upon investigations with a view towards legislative reform. Both bodies observe that the practice of law is restricted through a combination of government regulation and self-regulatory arrangements to maintain high standards of quality, as well as individual professional competence and integrity. However, it is contended that some of the costs associated with this regulation are undesirable in the public interest because of the restrictions imposed on competition.²⁴ It is clear that both bodies contemplate that competition policy should be extended at both the Commonwealth and State level to the legal profession. The Discussion Paper released by the Law Reform Commission of Victoria already incorporates a number of specific proposals designed to encourage competition,²⁵ *inter alia*, by:

- permitting barristers to be retained directly by members of professions other than solicitors and to perform the work of a solicitor incidental to these retainers;
- allowing barristers, in appropriate circumstances, to receive instructions directly from clients;
- permitting barristers to form partnerships with each other, to incorporate their practices, and to practice as employees of a bar practice;
- allowing barristers to appear with advocates who are not members of the bar;
- abolishing the rule requiring barristers to practice from approved chambers;
- abolishing the rule requiring barristers to use the services of an approved clerk;
- abolishing the rule that a junior must be briefed to appear with a

²³ See THE BULLETIN, June 11, 1991, at 28.

²⁴ See LAW REFORM COMMISSION OF VICTORIA, ACCESS TO LAW: RESTRICTIONS ON LEGAL PRACTICE 4 (Discussion Paper no. 23, July 1991); TRADE PRACTICES COMMISSION, REGULATION OF PROFESSIONAL MARKETS IN AUSTRALIA: ISSUES FOR REVIEW 6 (December 1990).

²⁵ LAW REFORM COMMISSION OF VICTORIA, *supra* note 24, at 52-53.

QC;

- permitting QCs to accept drafting work;
- permitting barristers to attend solicitors' offices;
- proposing that the legislative restrictions on contingent fee arrangements be repealed;
- proposing that the Law Society should review restrictions on fee and service advertising by their members, with a view to removing the restrictions;
- repealing legislation imposing restrictions on equity participation by non-lawyers, that is, restrictions on multi-disciplinary practice and equity participation;

These inquiries and recommendations have drawn stringent criticism from the President of the Law Council of Australia, Alex Chernov QC²⁶ and the outcome of these inquiries is certain to result in significant changes. Moreover, it is questionable as to how long the legal profession's monopoly over certain lucrative areas, such as property conveyancing, will remain intact.²⁷

B. The Mega-Firm

Sole practitioners made up sixty-three percent of all law firms in Australia in 1985, and ninety percent of all firms had fewer than four partners.²⁸ However, ample evidence of a trend towards the mega-firm exists with such firms having branches in all the major commercial centers around Australia.

²⁶ See AUSTL. L. NEWS, July 1991, at 7-8.

²⁷ WEISBROT, *supra* note 1, at 231. Note, the monopoly does not exist in South Australia where a large volume of property conveyancing is done by land agents.

²⁸ *Id.* at 250.

These large corporate firms have considerable power as the following Australian Bureau of Statistics table²⁹ reveals:

Firm Size	Surplus Per Principal	Number of Princip.	Percent of Princip.	Number of Firms	Percent of Firms
0-4	60,646	3,748	34.2	3,722	57.6
5-9	56,604	2,173	19.8	1,480	22.9
10-19	74,891	1,828	16.7	749	11.6
20-49	82,638	1,486	13.6	374	5.8
50-99	133,553	760	6.9	92	1.4
100-199	99,265	272	2.5	19	0.3
200-299	163,211	299	2.7	12	0.2
300+	221,717	396	3.6	11	0.2
Total	79,830	10,962	100.0	6,459	100.2

The survey shows that most law firms employ fewer than five people and most law firms' principals (595) are principals of firms employing fewer than ten people. These principals earn (on average) less than \$60,000 each. By contrast, the largest forty-two law firms (employing more than 100 persons each) have 967 principals (earning on average \$169,183 each). Additionally, the survey shows that nearly three-quarters of firms of solicitors employ fewer than ten persons each, and that forty-five percent of all solicitor-principals are principals of such firms. Only twenty-one firms of solicitors (out of 4,586 such firms) employ more than 200 persons each. Only 7.7% of all solicitor-principals are principals of such firms, earning (on average) net surplus per principal of just \$200,000. Such earnings are atypical of solicitor-principals in general, who earn about \$77,000 each.

²⁹ THE AUSTRALIAN BUREAU OF STATISTICS, LEGAL SERVICE INDUSTRY, AUSTRALIA 1987-1988, tbl. 5 (1989).

C. *Other*

Space constraints preclude further detailed consideration, but other trends and issues merit brief mention.³⁰ There are inter-state and urban-rural imbalances in the distribution of lawyers. About seventy-two percent of Australia's lawyers are located in New South Wales and Victoria, and the overwhelming majority of all lawyers are to be found in the major commercial centers. As a consequence, many rural districts are poorly served by the legal profession and access to the legal system is restricted and expensive.³¹ New work is emerging in a variety of areas; particularly those areas discussed above. Concerns over lengthy delays with litigation and the costs associated with traditional methods of resolving disputes have given rise to a range of initiatives, from court sponsored "settlement weeks" and pre-trial compulsory mediation procedures to privately developed negotiation and mediation practices.

³⁰ See generally R. BLANDY ET AL., *LAWYERS' INCOMES IN AUSTRALIA*; REVISED SUPPLEMENTARY REPORT TO THE LAW COUNCIL OF AUSTRALIA (January 1991).

³¹ See T. VINSON ET AL., *TERRITORIAL JUSTICE IN AUSTRALIA*, NEW SOUTH WALES BUREAU OF CRIME STATISTICS AND RESEARCH 6-8 (1974) (Statistical Report no. 20) cited in WEISBROT, *supra* note 1, at 77.

